

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FIRST REGION**

In the Matter of

CASALLA WASTE SYSTEMS  
d/b/a/ATLANTIC NORTH WASTE SYSTEMS

Employer<sup>1</sup>

and

TRUCK DRIVERS UNION, LOCAL #170, a/w  
INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, AFL-CIO

Petitioner

Case 1-RC-21539

**DECISION AND DIRECTION OF ELECTION<sup>2</sup>**

The Petitioner, Teamsters Local 170, seeks to represent a bargaining unit of 15 drivers employed by Atlantic North Waste Systems (Atlantic) at its Holliston, Massachusetts facility. The only issue litigated at the hearing was whether, as Atlantic contends, the petitioned-for unit must also include the eight maintenance employees who work at the Holliston facility.<sup>3</sup> I find that the petitioned-for unit of drivers is appropriate and, therefore, I shall not include the maintenance employees in the unit.

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<sup>1</sup> The name of the Employer appears as amended at the hearing.

<sup>2</sup> Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

Upon the entire record in this proceeding, I find that: 1) the hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed; 2) the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this matter; 3) the labor organization involved claims to represent certain employees of the Employer; and 4) a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

<sup>3</sup> Teamsters Local 170 is willing to proceed to an election in the broader unit should I find it appropriate.

Atlantic is engaged in the business of hauling solid waste and operating transfer stations. Dominic Maruca is the general manager for the company's Holliston facility, which has a hauling operation and a transfer station. The hauling operation is staffed by drivers and maintenance employees. The drivers report to supervisor Ed Gilbert, and the maintenance employees report to supervisor Charles Pepper. Both Gilbert and Pepper report to Maruca. The Holliston facility also employs a dispatcher for the drivers, Kelley Burke, and a safety coordinator, Jim Ardolino, who is responsible for the safety of the hauling operation, including the driving and maintenance operations.<sup>4</sup> Finally, the Holliston facility employs equipment operators at its transfer station.<sup>5</sup>

The fifteen drivers in Holliston are dispatched to routes on which they pick up waste material from dumpsters at customer sites. Five drivers drive front end loaders, and six drivers drive roll-off trucks. The front end loaders have forks in front that lift the dumpsters over the cab of the truck and dump the rubbish into the body of the truck. The roll-off trucks back into the dumpsters and pull them onto the truck with a hoist. The remaining four drivers drive tractor trucks and a truck called a "pal body" truck that is used to deliver dumpsters to customers.

The maintenance employees are responsible for performing repairs and preventive maintenance on the trucks as well as for maintaining the heavy equipment used by the transfer station employees. They spend about 90 percent of their time maintaining the trucks and 10 percent of their time on the transfer station equipment. The maintenance crew also includes a shop assistant, Dave Tedesco, who is responsible for picking up parts.<sup>6</sup> The maintenance employees work in a shop at the facility that has four bays for equipment to be repaired.

The drivers complete vehicle condition reports each day in which they note whether their truck has any problems that need attention by the maintenance employees, or they may tell the maintenance employees about any maintenance concerns. When the trucks have a maintenance problem while on the road, the drivers call Pepper or one of the maintenance employees on a radio. The maintenance employees try to talk the drivers through mechanical problems. If that does not solve the problem, Pepper sends a maintenance employee on a "road call" to repair the truck or swap it for another. The maintenance employees do at least one road call per week.

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<sup>4</sup> The parties have stipulated, and I find, that maintenance supervisor Charles Pepper is a statutory supervisor who shall be excluded from any unit found appropriate. The parties have stipulated, and I find, that the drivers' supervisor, Ed Gilbert, dispatcher Kelly Burke, and safety coordinator Jim Ardolino shall be excluded from any unit found appropriate.

<sup>5</sup> The transfer station receives waste from Atlantic trucks as well as from other companies. Neither party seeks to include the equipment operators in the proposed unit.

<sup>6</sup> Atlantic seeks to include the shop assistant in the unit.

In some instances the drivers and maintenance employees work together on road calls. The front end loaders have a blade that compacts the rubbish. About once a month an object gets stuck in one of the blades, and a driver and maintenance employee may work together to free the object. About every other week a dumpster falls into the body of a front end loader, and the driver and maintenance employee work together to get it out. These tasks may take an hour or two. About once every two weeks, the trucks spill oil or there is a hydraulic line break. When this occurs, a maintenance employee is sent out with an absorbent material called “speedy dry,” shovels, and brooms to help the driver clean up the spill. Maintenance employees may also help clean up garbage that has fallen out of trucks.<sup>7</sup> Sometimes maintenance employee ride along with drivers to diagnose a mechanical problem that does not show up in the shop. This happens about once every other month.<sup>8</sup>

Drivers sometimes perform minor truck maintenance, such as tightening a mirror, changing a light bulb, putting air in the tires, or fixing a flat tire. These tasks require the use of the maintenance employees’ tools. They are responsible for checking oil and coolant levels each morning and adding oil or coolant if necessary, a task that maintenance employees also perform when doing preventive maintenance on the trucks. Both drivers and maintenance employees fill the trucks with gas.

Two of the maintenance employees, Ray Birmingham and Steve Gariepy, transferred into their current jobs from positions as drivers.<sup>9</sup> Driver Bob Biagetti has asked Pepper if he has any openings on weekends to do maintenance work on an overtime basis, but Pepper has not had a need. There is no evidence of any transfers from maintenance to driver positions.

Drivers are required to have a commercial driver’s license (CDL) to drive these trucks. The maintenance employees are required to have mechanical ability but are not

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<sup>7</sup> The shop assistant is one of the maintenance employees that helps the drivers when spills occur. He also assists the drivers when they damage customers’ property, such as mailboxes, although the record does not reveal what he does in this regard.

<sup>8</sup> On July 1, 2002, maintenance employee Steve Gariepy rode with a driver for seven hours in order to fix his truck.

<sup>9</sup> Pepper testified that, at the time of Gariepy’s evaluation in February 2002, he was working half the time as a driver and half the time as a maintenance employee. Gariepy’s February 2002 evaluation was completed by Rick Biagetti, Gilbert’s predecessor, so this was presumably before his transfer to his current position as a maintenance employee. The record does not reveal when he transferred from a driver to maintenance position.

required to have a mechanic's license. Maintenance employees are encouraged to obtain a CDL, but it is not required.<sup>10</sup> Birmingham and Gariepy,<sup>11</sup> who, as noted above, were previously drivers, have a CDL. Gariepy and Birmingham fill in as drivers when the regular drivers are out sick or on vacation or in an emergency.<sup>12</sup> Pepper testified that this happens about once a week. Recently a driver exceeded the 60 hours per week that he is allowed to drive under D.O.T. regulations, and a maintenance employee drove his route. Senior drivers may take candidates for driving positions out for a drive in order to evaluate their driving ability. Gariepy is one of the senior employees who is used as an evaluator.

Gilbert disciplines, evaluates, and recommends raises for the drivers, and Pepper does the same for the maintenance employees, although Maruca has final say with respect to evaluations and discipline. Gilbert and Pepper approve the vacations of their respective employees, but Gilbert coordinates the vacation schedule with Pepper, so that there is a maintenance employee with a CDL available to cover for drivers on vacation. The drivers and maintenance employees report to Maruca in the absence of their immediate supervisor.

The drivers work from 6 a.m. to about 5 or 6 p.m., Monday through Friday, and work periodically on Saturdays. Maintenance employees also work from 6 a.m. to 5 or 6 p.m. A maintenance employee is usually present on Saturday and, if not, one maintenance employee is on call. One maintenance employee who performs preventive maintenance is employed part-time, from 5 p.m. to 8 p.m.

Drivers and mechanics are hourly paid and earn comparable wages, about \$17 to \$17.50 per hour, on average,<sup>13</sup> and are eligible for the same bonuses. Employees in both classifications punch the same time clock and are eligible for overtime. Drivers and maintenance employees receive the same fringe benefits, including health insurance, dental insurance, a 401(K) program, vacation days, holidays, and reimbursement for steel-tipped shoes. They wear the same uniform and attend the same company outings. They attend the same safety meetings conducted by Jim Ardolino and use the same safety manual. They are subject to the same employee handbook and disciplinary system. They share a break room and a work area outside Pepper's office, where they do their paperwork. Some drivers take their breaks on the road and some take their breaks at the Holliston facility. The front end drivers take their lunch break at the facility about 50

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<sup>10</sup> Maintenance employees do not need a CDL to drive the trucks within the Holliston yard but do need one to drive the trucks on the road. Pepper testified that it may be useful for a maintenance employee to take a truck out for a ride to check a problem.

<sup>11</sup> Tim Nutile, a maintenance employee who recently left his job, also had one. Maintenance employee Ed Grant had one in the past and is currently studying to obtain his CDL.

<sup>12</sup> Pepper also has a CDL and fills in for drivers if Gariepy and Birmingham are unavailable.

<sup>13</sup> Maintenance employees are paid their usual rate when they drive trucks.

percent of the time. The roll-off drivers return to Holliston every couple of hours and are there more frequently.

Atlantic's regional operations manager, Robert Martocchio, testified that Teamsters Local 170 represents a bargaining unit of drivers and maintenance employees at Atlantic's Peabody, Massachusetts location. The Peabody facility has 22 drivers and 7 maintenance employees. Because no maintenance employees in Peabody have a CDL, they do not perform driving work. Another union represents a bargaining unit of drivers and maintenance employees at the company's Abington, Massachusetts facility. There is no history of collective bargaining in Holliston.

It is well settled Board law that a union need not seek to represent only the most appropriate unit or most comprehensive unit, but only an appropriate unit. Transerv Systems,<sup>14</sup> Morand Bros. Beverages Co.<sup>15</sup> In determining unit scope, the Board first considers the petitioning union's proposals. If the unit sought is appropriate, the inquiry ends. If it is inappropriate, the Board will scrutinize the employer's proposals. Dezcon, Inc.<sup>16</sup> In deciding whether a unit is appropriate, the Board weighs various factors, including differences or similarities in the method of wages or compensation, hours of work, employment benefits, supervision, working conditions, job duties, qualifications, training, and skills. The Board also considers the degree of integration between the functions of employees, contact with other employees, and interchange with other employees, as well as history of bargaining. Overnite Transportation Co.<sup>17</sup> The Petitioner's desire as to the unit is a relevant consideration, though not dispositive. Florida Casino Cruises.<sup>18</sup>

I find that the petitioned-for unit of drivers is an appropriate unit. The drivers and maintenance employees report to different immediate supervisors, who are responsible for disciplining, evaluating, and recommending pay raises for the employees in their group. They perform different types of duties that require different skills. In this regard, the drivers drive trucks and are required to have a CDL, while the maintenance employees repair trucks and are required to have mechanical ability. Maintenance employees are encouraged, but not required, to have a CDL. Six out of the eight maintenance employees do not have a CDL and never drive routes. The fact that two out of eight maintenance employees fill in as drivers about once a week is not sufficient interchange to mandate the inclusion of the entire classification in the unit. Conversely, although the drivers perform minor maintenance on their trucks such as checking oil and

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<sup>14</sup> 311 NLRB 766 (1993).

<sup>15</sup> 91 NLRB 409 (1950).

<sup>16</sup> 295 NLRB 109, 111 (1989).

<sup>17</sup> 322 NLRB 723, 724, citing Kalamazoo Paper Box Corp., 136 NLRB 134, 137 (1962).

<sup>18</sup> 322 NLRB 857, 858 (1997), citing Airco, Inc., 273 NLRB 348 (1984).

coolant levels, putting air in the tires, changing a light bulb, or filling the trucks with gas, this does not warrant a finding that they perform the same work as maintenance employees. There have been only two transfers from driver to maintenance positions, and no transfers from maintenance to driver positions. While there is necessarily some work-related contact between the drivers and maintenance employees regarding truck repairs at the shop and during occasional “road calls,” the drivers spend most of their day away from the facility driving their routes, and the maintenance employees spend most of their day working in the maintenance shop. In light of all these factors, and notwithstanding the similar hours, pay, and benefits enjoyed by the two classifications, I find that the petitioned-for unit of drivers is appropriate.

This result is supported by recent cases in which the Board has approved petitioned-for units of drivers notwithstanding an employer’s assertion that the unit must include mechanics. In Overnite Transportation Company,<sup>19</sup> the Board found such a unit appropriate where the regular supervision of the two groups was separate,<sup>20</sup> the mechanics had specialized skills, and there was no regular interchange, notwithstanding the fact that one classification acted as an extra set of hands to assist the other classification at times.

A similar result obtained in a subsequent case involving the same employer, Overnite Transportation Company.<sup>21</sup> There the Board excluded mechanics from a petitioned-for unit of drivers and various other employees, where the mechanics were separately supervised and worked in a separate shop area. The Board found that, even though the mechanics did not have any special certification, they required special skills in order to repair the employer’s vehicles. The Board found the type of contact and integration between drivers and mechanics when mechanics perform inspections, when drivers report vehicle concerns to mechanics, and when breakdowns occur on the road to be insufficient to require inclusion of the mechanics. The Board noted that the mechanics’ possession of a CDL was optional, that only four out of the fourteen mechanics had a CDL, and that only one of the fourteen mechanics performed driving duties that might be similar to those of the drivers in the unit. The Board found that driving duties performed by the mechanics in connection with the emergency repair of vehicles was not the type of driving performed by drivers in the unit and was insufficient to require their inclusion.

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<sup>19</sup> 322 NLRB 347 (1996), affirmed 322 NLRB 723 (1996) (denial of the employer’s motion for reconsideration).

<sup>20</sup> The Board found that occasional supervision by substitutes or sporadic supervision by the supervisors of other employees did not undermine its finding, where the regular supervision of the two groups was separate. Thus, the fact that Maruca supervises the drivers and maintenance employees in the absence of their regular supervisors does not, as Atlantic contends, warrant a different result.

<sup>21</sup> 325 NLRB 612 (1998).

The three cases cited by Atlantic, Carpenter Trucking,<sup>22</sup> Nichols Sanitation, Inc.,<sup>23</sup> and CPA Trucking Agency<sup>24</sup> are all distinguishable in that the mechanics that were included in petitioned-for units of drivers in those cases shared common supervision with the drivers. In Overnite Transportation Company,<sup>25</sup> the Board distinguished Carpenter Trucking, on the ground that the drivers in Carpenter Trucking assisted mechanics with “major” mechanical work.<sup>26</sup> Finally here, in contrast to Carpenter Trucking, Nichols Sanitation, Inc. and CPA Trucking Agency, only two out of the eight maintenance employees are qualified to and do occasionally perform driving work.

Finally, the Board does not require a union to seek the same unit at different locations of the same employer, even where there is a collective-bargaining history in a broader unit at the other locations. Overnite Transportation Company.<sup>27</sup> Thus, the broader units at Atlantic’s Peabody and Abington facilities do not warrant a different result.

Accordingly, based upon the foregoing and the stipulations of the parties at the hearing, I find that the following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time drivers employed by the Employer at its Holliston, Massachusetts facility, but excluding maintenance employees, the safety coordinator, the dispatcher, equipment operators, guards and supervisors as defined in the Act.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the Regional Director among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election and who retained their status as such during the eligibility

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<sup>22</sup> 266 NLRB 907 (1983).

<sup>23</sup> 230 NLRB 834 (1977).

<sup>24</sup> 185 NLRB 452 (1970).

<sup>25</sup> 322 NLRB 347 (1996).

<sup>26</sup> Unlike the instant case, the drivers in Carpenter Trucking assisted the mechanics with tasks such as pulling engines out of trucks, replacing them with rebuilt engines, putting drive shafts into trucks, hanging rear ends, and taking radiators out of trucks.

<sup>27</sup> 322 NLRB 723, 724 (1996).

period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date, and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for purposes of collective bargaining by Truck Drivers Union, Local #170, a/w International Brotherhood of Teamsters, AFL-CIO.

### **LIST OF VOTERS**

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven days of the date of this Decision, two copies of an election eligibility list containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the Regional Director, who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such list must be received by the Regional Office, Thomas P. O'Neill, Jr. Federal Building, Sixth Floor, 10 Causeway Street, Boston, Massachusetts, on or before September 4, 2002. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.



### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review this Order may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by September 11, 2002.

/s/ Paul J. Rickard  
Paul J. Rickard, Acting Regional Director  
First Region  
National Labor Relations Board  
Thomas P. O'Neill, Jr. Federal Building  
10 Causeway Street, Sixth Floor  
Boston, MA 02222-1072

Dated at Boston, Massachusetts  
this 28<sup>th</sup> day of August 2002.

440-1760-6280

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